

CHAPTER 314

S.B. No. 473

AN ACT

relating to removal of and a warehouseman's lien on the property of an evicted tenant.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsections (a), (b), (c), and (d), Section 24.0061, Property Code, are amended to read as follows:

(a) A landlord who prevails in a forcible entry and detainer or a forcible detainer action is entitled to a judgment for possession of the premises, awards of costs and attorney's fees as provided by Section 24.006, and a writ of possession. A prevailing tenant is entitled to a judgment for costs and, if appropriate, reasonable attorney's fees. *In this chapter, "premises" means the rental unit and any outside area or facility that the tenant is entitled to use under the lease or that is held out for the use of tenants generally.*

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment *for possession* is rendered unless a possession bond has been filed *and approved* under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The writ of possession shall order the officer executing the writ to deliver possession of the premises to the landlord and to:

(1) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;

(2) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the premises other than personal property claimed to be owned by the landlord; and

(3) place, or have an authorized person place, the removed personal property outside the rental unit [~~premises~~] at a nearby location, but not blocking [~~on~~] a public [~~or private~~] sidewalk, passageway, or street [~~, or parking area~~] and not while it is raining, sleeting, or snowing.

(d) The writ of possession shall authorize the officer, at the officer's discretion, to:

(1) post a written warning on the exterior of the front door of the rental unit [~~premises~~], notifying the tenant that the writ has been issued and that it will be executed on or after a specific date and time stated in the warning; and

(2) engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

SECTION 2. Section 24.009, Property Code, as added by Chapter 747, Acts of the 69th Legislature, Regular Session, 1985, is renumbered as Section 24.0062 and amended to read as follows:

Sec. 24.0062 [24.009]. WAREHOUSEMAN'S LIEN. (a) If personal property is removed from a tenant's premises as the result of an action brought under this chapter and stored in a bonded or insured public warehouse, the warehouseman has a lien on the property to the extent of any reasonable storage and moving charges incurred by the warehouseman. *The lien does not attach to any property until the property has been stored by the warehouseman.*

(b) *If property is to be removed and stored in a public warehouse under a writ of possession, the officer executing the writ shall, at the time of execution, deliver in person to the tenant, or by first class mail to the tenant's last known address not later than 72 hours after execution of the writ if the tenant is not present, a written notice stating the complete address and telephone number of the location at which the property may be redeemed and stating that:*

(1) *the tenant's property is to be removed and stored by a public warehouseman under Section 24.0062 of the Property Code;*

(2) *the tenant may redeem any of the property, without payment of moving or storage charges, on demand during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises;*

(3) *within 30 days from the date of storage, the tenant may redeem any of the property described by Section 24.0062(e), Property Code, on demand by the tenant and on payment of the moving and storage charges reasonably attributable to the items being redeemed;*

(4) *after the 30-day period and before sale, the tenant may redeem the property on demand by the tenant and on payment of all moving and storage charges; and*

(5) *subject to the previously stated conditions, the warehouseman has a lien on the property to secure payment of moving and storage charges and may sell all the property to satisfy reasonable moving and storage charges after 30 days, subject to the requirements of Section 24.0062(j) of the Property Code.*

(c) *The statement required by Subsection (b)(2) must be underlined or in boldfaced print.*

(d) *On demand by the tenant during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises, the warehouseman shall return to the tenant all property requested by the tenant, without charge.*

(e) *On demand by the tenant within 30 days after the date the property is stored by the warehouseman and on payment by the tenant of the moving and storage charges reasonably attributable to the items being redeemed, the warehouseman shall return to the tenant at the warehouse the following property:*

- (1) *wearing apparel;*
- (2) *tools, apparatus, and books of a trade or profession;*
- (3) *school books;*
- (4) *a family library;*
- (5) *family portraits and pictures;*
- (6) *one couch, two living room chairs, and a dining table and chairs;*
- (7) *beds and bedding;*
- (8) *kitchen furniture and utensils;*
- (9) *food and foodstuffs;*
- (10) *medicine and medical supplies;*
- (11) *one automobile and one truck;*
- (12) *agricultural implements;*
- (13) *children's toys not commonly used by adults;*
- (14) *goods that the warehouseman or the warehouseman's agent knows are owned by a person other than the tenant or an occupant of the residence;*
- (15) *goods that the warehouseman or the warehouseman's agent knows are subject to a recorded chattel mortgage or financing agreement; and*
- (16) *cash.*

(f) *During the first 30 days after the date of storage, the warehouseman may not require payment of removal or storage charges for other items as a condition for redeeming the items described by Subsection (e).*

(g) *On demand by the tenant to the warehouseman after the 30-day period and before sale and on payment by the tenant of all unpaid moving and storage charges on all the property, the warehouseman shall return all the previously unredeemed property to the tenant at the warehouse.*

(h) *A warehouseman may not recover any moving or storage charges if the court determines under Subsection (i) that the warehouseman's moving or storage charges are not reasonable.*

(i) *Before the sale of the property by the warehouseman, the tenant may file suit in the justice court in which the eviction judgment was rendered or in another court of competent jurisdiction in the county in which the rental premises are located to recover the property described by Subsection (e) on the ground that the landlord failed to return the property after timely demand and payment by the tenant, as provided by this section. Before sale, the tenant may also file suit to recover all property moved or stored by the warehouseman on the ground that the amount of the warehouseman's moving or storage charges is not reasonable. All proceedings under this subsection have precedence over other matters on the court's docket. The justice court that issued the writ of possession has jurisdiction under this section regardless of the amount in controversy.*

(j) ~~(h)~~ Any sale of property that is ~~the~~ subject to ~~of~~ a lien under this section shall be conducted in accordance with Sections 7.210, 9.301–9.318, and 9.501–9.507 of the Business & Commerce Code.

(k) *In a proceeding under this section, the prevailing party is entitled to recover actual damages, reasonable attorney's fees, court costs, and, if appropriate, any property withheld in violation of this section or the value of that property if it has been sold.*

SECTION 3. This Act applies only to property removed on or after the effective date of this Act pursuant to a forcible entry and detainer or forcible detainer action.

SECTION 4. This Act takes effect September 1, 1987.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 2, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 1987, by a viva-voce vote.

Passed the House, with amendments, on May 26, 1987, by a non-record vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.